



November 27, 2017

State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
PO Box 168041
Sacramento, CA 95816
Attn: Jill Sewell, Office Chief

RE: Bid Protest by Myers and Sons Construction, Caltrans Contract #03-OH26U4

Please consider this letter as a protest of the bid submitted by Flatiron West, Inc. ("Flatiron") for Contract # 03-OH26U4. The bid submitted by Flatiron is nonresponse and must be rejected because Flatiron failed to comply with mandatory requirements stated in the Instructions to Bidders. Specifically, Flatiron failed to meet the DBE requirement for the Contract and apparently failed to make a good faith effort to meet that requirements, as required by the Instruction to Bidders and California law. Conversely, Myers and Sons exceeded the DBE goal on bid #03-OH26U4.

Flatiron did not achieve the DBE goal on bid day, as is apparent from Flatiron's failure to list first-tier DBE subcontractors in favor of non-DBE subcontractors. Rather, Flatiron only attempted to meet the DBE goal after bid day, once it was apparent that other bidders, including Myers and Sons, exceeded the DBE goal. In order to appear to have met the goal, Flatiron solicited its first tier subcontractors to come up with second tier DBEs AFTER bid day, knowing that second tier DBEs are not required to be listed on the bid documents on bid day. In other words, on bid day, Flatiron did not meet or intend to meet the DBE goal.

Further, Flatiron is counting on 100% credit for using DBE trucking brokers. However, the use of DBE truck brokers is only counted at the cost of their commission and not 100%. Accordingly, for this and other reasons identified in more detail below, Flatiron's DBE percentage must be adjusted downward.

Flatiron fell short of meeting the DBE goal on the project. Flatiron's DBE submittal attempts to mislead Caltrans and the OBE Department in believing they met the project goal when, in fact, they did not. Here are the fatal flaws:

1. On bid date and time, Vertical Constructors did not have a work code for Concrete Barrier(see exhibit C), therefore Vertical Constructors bid for concrete barrier in the amount of \$283,784.51 should not be counted towards the goal. In fact Vertical Constructors was certified as a construction equipment rental company on bid date and now all of sudden after bid opening, they are providing concrete barrier work. Vertical Constructors is not performing a Commercially Useful Function if they went from an equipment rental firm to now performing major concrete barrier work. All of Vertical Constructor's subbid should not be allowed. This reduces Flatiron DBE commitment from 13.10% to 12.26%.
2. Flatiron exaggerated its DBE commitment amounts on several DBEs by listing them for amounts greater than the amount listed in the bid item or trying to claim the subcontractor bond cost towards the DBE cost. As you will read in M&M quote, they clearly state "No bond, fees, permits, surveying or staking included." Flatiron should exclude from their participation levels the exaggerated DBE amounts and the bond cost that is not paid by the DBE. The exaggerated amounts and the unclaimed bond costs by the DBEs are not allowed and are not to be counted towards the goal. The following table shows these differences between what Flatiron is claiming and what the DBE quote states.:

Name	Claimed	Actual Credit	Reason For Difference
Moore	\$ 111,650.00	\$ 75,000.00	Amount Claimed Greater then Bid Amount
Gallaway	\$ 189,829.00	\$ 152,500.00	Amount Claimed Greater then Bid Amount
M & M	\$ 1,100,576.61	\$ 1,091,310.00	Sub Bond Cost Does Not Apply to DBE Goal
CAS	\$ 167,542.40	\$ 163,416.00	Sub Bond Cost Does Not Apply to DBE Goal
Ernest Dee	\$ 404,418.00	\$ 387,858.00	Amount Claimed Greater then Bid Amount
Difference		\$ 103,430.01	
Revised DBE % Achieved		11.96%	(Below the Project Goal)

As you can see, just taking into account the first two points, Flatiron did not achieve the project goal. The items below show that not only did Flatiron achieve less DBE participation, but its means and methods to achieve the DBE goal, also indicates that Flatiron did not make a sincere good faith effort. Rather, Flatiron chose to not adhere to the purpose of the GFE and instead tried to circumvent the GFE post bid in an effort to keep the project. Other issues with Flatiron's DBE participation and Good Faith Effort include:

3. Flatiron went to Coral Construction after bid, and asked them to include DBE participation for "additional cost". This was not an option to all the other contractors on bid day (see exhibit A and B), while contractors are allowed to list DBE participation from Subs and Suppliers the creation of a second quote post bid indicates that Flatiron may have manipulated the documents to give the impression that they met the project goal on bid day.
4. Flatiron inappropriately listed 100% of the Quoted amount from Double M Trucking. Double M Trucking quote clearly states that they cannot provide 100% DBE Trucking, yet Flatiron still chose to claim Double M Trucking for trucking service. At 100% credit (see exhibit D). Therefore, all or a portion of the \$243,800 should not be counted towards the DBE goal

- because Double M Trucking cannot provide 100% of the trucking and will have to act as a trucker broker on this project to meet the full amount.
5. Flatiron listed Dragon Material Transport, Inc. for \$222,944.40. Per the DBE Commitment form, Dragon Material Transport is to furnish and deliver Asphalt Binder to Vulcan Materials in Roseville. This proposed transaction is a PASS THROUGH. Vulcan Material already produces Asphalt Binder. Caltrans should not count Dragon Material Transport for any of the supplies or delivery of the asphalt binder to Vulcan because Vulcan already produces this material. See Exhibit E which is Vulcan's website notice that states they provide Asphalt Binder. In addition, Dragon Material Transport, Inc. only has a couple older trucks that would not be able to meet the requirements and amounts listed by Flatiron. Dragon Material Transport is from Fresno and they do not have the trucks to service this project. They are listed for lots of projects and so the question is how can this limited trucking company work on this project. At best Dragon Material Transport will act as a Truck Broker which is the work code Dragon has in there DBE profile. Dragon DBE work codes do not match the work of supply and haul of HMA Oil. Accordingly, Caltrans should disallow \$222,944.40 because Dragon Material Transport is operating at best as a broker, but more so a pass through for Vulcan Materials on asphalt binder.
 6. Flatiron also listed West Coast Water & Trucking, Inc. for \$106,400 of trucking. Although West Coast does have operating trucks of its own, given their present work load, it is unlikely they will perform the trucking themselves and will act as a trucker broker, which is a work code listed for them in their DBE profile. In addition, West Coasts' quote states under General Hauling Terms, **"For projects that require drivers to be paid the equivalent of the Teamsters wage rate, as defined by the prevailing wage determination for the respective county, owner operators will be used. If the contractor requires company trucks to perform said work, add 35% to the applicable hourly rate."** This project must follow the prevailing wage rate provisions and based on the quote, West Coast Water & Trucking will use owner operators to avoid paying prevailing wage rates. However, this also means that West Coast Water & Trucking is not using its own trucks or its employees. This further supports the conclusions that West Coast is acting as a broker. Finally, West Coast even states in writing that if the contractor wants it to use its company trucks, the contractor must add 35% to the quoted rate. Therefore, Caltrans should disallow all of the \$106,400 for abusing their DBE certification status.
 7. Flatiron listed Veridico Group for SWPPP at \$45,305. Vida Wright, owner of Veridico Group, works full time for Parsons Brinkerhoff on the California High Speed Rail Authority office in downtown Sacramento. As a fulltime consultant on the CHSRA project, Ms. Wright cannot perform a commercially useful function on this project since she is not available to work on the project. Caltrans should therefore disallow \$45,305 because the owner of Veridico Group works FULLTIME on the California High Speed Rail project.
 8. On Flatiron DBE commitment form they wrote "Various Bid Items" instead of "Actual Bid Items" on several DBEs. This makes it difficult to evaluate their use of DBE firms, especially truckers, sweepers and suppliers. In addition, DBEs need to be tied to bid items so Caltrans has enforcement tools once the project begins to determine whether a prime is not meeting

its DBE goals. This is a clear example of how Flatiron made every effort possible to meet the goal post bid instead of choosing DBE subcontractors who were available on bid day.

Accordingly, the following amounts should not be counted or credited towards Flatiron's DBE Goal pursuant to 49 CFR Part 26.55:

Vertical Constructors	\$283,784
See Table above	\$103,430.01
Veridico Group	\$45,305
Coral Construction	\$6116
West Coast Trucking	\$462,341
West Coast Trucking	\$106,400
Double M Trucking	\$243,800
Dragon Material Transport	\$222,944.40

Total disallowed is \$1,474,120.41.

The initial DBE Commitment form listed the DBE participation at \$4,456,688.14. With the disallowed total of \$1,474,120.41, the adjustment results in the DBE participation now at \$2,982,567.73 or 8.77%. Therefore, Flatiron did not meet the DBE Goal of 12%.

Because Flatiron did not meet the stated DBE Goal of 12%, in order to be awarded the Contract, it must demonstrate Good Faith Efforts to meet that goal. As stated in Section 2-1.12B(3) of the Special Conditions, "an adequate good faith effort means that the bidder must show that it took all reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE Goal." Further, Caltrans "considers DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal." As stated in Appendix A to 49 CFR Part 26, "For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable effort, the apparent successful bidder could have met the goal." Here, Myers and Sons met the DBE goal by listing higher-priced DBE subcontractors in lieu of lower-priced non-DBE subcontractors. Flatiron failed to do the same in order to lower its bid price. Pursuant to Appendix A, "the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract goal, as long as such costs are reasonable." Accordingly, Flatiron has not made a good faith effort if it rejected higher-priced DBE subcontractors in favor of lower-priced DBE subcontractors.

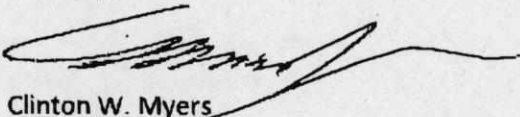
While we understand Flatiron did not meet the DBE goal based on the facts presented in this protest, we also know that OBEO will review Flatiron's good faith effort. We ask that OBEO examine Flatiron's total DBE good faith efforts under a microscope. If we found fatal flaws in the DBE Commitment and DBE quotes, we know OBEO will find fatal flaws in the sincerity of their good faith effort. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements.

Flatiron has a history of meeting the DBE goal by listing DBE truckers such as Double M Trucking, Dragon Material Transport and West Coast Water and Trucking when in reality as evidenced by the trucking firms quotes, these firms are mere truck brokers. Add to this the fatal flaw the listing Vertical Constructors for concrete barrier work when the firm was not even certified for that work on the day of bid and listing Dragon Material Transports for providing asphalt binder to Vulcan Material when Vulcan produces asphalt binder.

We ask that you reject Flatiron's bid for failing to be responsive and responsible to the DBE requirements set forth in the contract provisions.

Thank you very much for your attention to this matter. Myers and Sons hereby requests a copy of Flatiron's DBE Good Faith Effort Submittal, pursuant to the Public Records Act, Government Code Section 6250, et seq. Myers and Sons also reserves the right to add to or modify this protest after it receives Flatiron's DBE Good Faith Effort Submittal.

Sincerely,



Clinton W. Myers

Vice President

Myers and Sons Construction

Attachments

EXHIBIT A



Bond 0.6%
Rate:

SUBCONTRACT PROPOSAL

PROJECT: ROSEVILLE
PLACER CO, CADOT
03-0H28U4

BID DATE: 11/14/17
ESTIMATE NO: 171104C

PREPARED BY: KRIS KARPSTEIN

TERM6:

REFER
INQUIRIES TO: KRIS KARPSTEIN

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
33	TREATED WOOD WASTE	11,400.00	LB	\$ 0.20	\$ 2,280.00
167	MIDWEST GR SYSTEM (STEEL POST)	180.00	LF	\$ 33.00	\$ 5,940.00
168	MIDWEST GR SYSTEM (WOOD POST)	550.00	LF	\$ 32.00	\$ 17,600.00
172	SNGL THRIE BM BARRIER (WOOD POST)	3,280.00	LF	\$ 35.00	\$ 114,800.00
173	TRANSITION RAILING (TYPE DTB)	1.00	EA	\$ 5,750.00	\$ 5,750.00
174	TRANSITION RAILING (TYPE WB-31)	1.00	EA	\$ 5,650.00	\$ 5,650.00
175	END CAP (TYPE TC)	2.00	EA	\$ 500.00	\$ 1,000.00
176	END ANCHOR ASSEMBLY (TYPE SFT)	5.00	EA	\$ 875.00	\$ 4,375.00
177	TYPE SOFT-STOP TERMINAL SYSTEM	4.00	EA	\$ 3,500.00	\$ 14,000.00
178	ALT FLARED TERMINAL SYSTEM	2.00	EA	\$ 2,750.00	\$ 5,500.00
179	ALT CRASH CUSHION (PARTIAL)	2.00	EA	\$ 27,500.00	\$ 55,000.00
184	REMOVE GUARDRAIL	600.00	LF	\$ 8.00	\$ 4,800.00
185	RECON THRIE BEAM BARRIER	210.00	LF	\$ 30.00	\$ 6,300.00
186	RECON DOUBLE THRIE BM BARRIER	530.00	LF	\$ 35.00	\$ 18,550.00
212	MOBILIZATION	1.00	LS	\$ 5,000.00	\$ 5,000.00
TOTAL					\$ 266,545.00

TERMS AND CONDITIONS:

- 1 BOND EXCLUDED.
- 2 RETAINAGE NOT TO EXCEED THE PERCENTAGE BEING WITHHELD BY OWNER.
- 3 TRAFFIC CONTROL AND SURVEY EXCLUDED.
- 4 PROPOSAL ASSUMES MUTUALLY ACCEPTABLE SUBCONTRACT TERMS AND SCHEDULE.
- 5 PROPOSAL INCLUDES THREE MOBILIZATIONS. ADDITIONAL MOBS ARE \$2,000 EACH.
- 6 PROPOSAL EXCLUDES ALL CLEARING AND GRADING WORK.
- 7 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION NO. 1000005868.
- 8 UTILITIES NOT A PART OF THE USA LOCATE SYSTEM WILL BE MARKED BY OTHERS AT NO COST TO CORAL CONSTRUCTION.
- 9 PROPOSAL EXCLUDES LIABILITY INSURANCE LIMITS IN EXCESS OF \$ 10.0 MM.
- 10 PROPOSAL IS VALID FOR THIRTY (30) CALENDAR DAYS.
- 11 PROPOSAL EXCLUDES CONCRETE OR ASPHALT REMOVAL OR REPLACEMENT.
- 12 ITEM 179 EXCLUDES CONCRETE FOUNDATION. ADD \$5000 EACH FOR CORAL TO PROVIDE.

ABOVE PRICE QUOTED FOR IMMEDIATE ACCEPTANCE UNLESS OTHERWISE STATED; APPLY ONLY TO PROJECT SPECIFIED.

CORAL CONSTRUCTION COMPANY

BY: *Kris Karpstein*

TITLE: ESTIMATOR

DATE: 11/14/17

EXHIBIT B



CORAL

CONSTRUCTION COMPANY
SPECIALTY HIGHWAY AND AIRPORT CONSTRUCTION

SUBCONTRACT PROPOSAL

PROJECT: ROSEVILLE
PLACER CO, CADOT
03-0H26U4

BID DATE: 11/14/17
ESTIMATE NO: 171104C

PREPARED BY: KRIS KARPSTEIN

TERMS:

REFER

INQUIRIES TO: KRIS KARPSTEIN

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
33	TREATED WOOD WASTE	11,400.00	LB	\$ 0.20	\$ 2,280.00
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175	END CAP (TYPE TC)	2.00	EA	\$ 500.00	\$ 1,000.00
176	END ANCHOR ASSEMBLY (TYPE SFT)	5.00	EA	\$ 875.00	\$ 4,375.00
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186	RECON DOUBLE THRIE BM BARRIER	530.00	LF	\$ 35.00	\$ 18,550.00
212	MOBILIZATION	1.00	LS	\$ 5,000.00	\$ 5,000.00
TOTAL					\$ 266,545.00
OPTIONAL	DBE ADDER <i>Cost to Flation</i>	1.00	LS	\$ 6,116.00	\$ 6,116.00

TERMS AND CONDITIONS:

- 1 BOND EXCLUDED.
- 2 RETAINAGE NOT TO EXCEED THE PERCENTAGE BEING WITHHELD BY OWNER.
- 3 TRAFFIC CONTROL AND SURVEY EXCLUDED.
- 4 PROPOSAL ASSUMES MUTUALLY ACCEPTABLE SUBCONTRACT TERMS AND SCHEDULE.
- 5 PROPOSAL INCLUDES THREE MOBILIZATIONS. ADDITIONAL MOBS ARE \$2,000 EACH.
- 6 PROPOSAL EXCLUDES ALL CLEARING AND GRADING WORK.
- 7 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION NO. 1000005888.
- 8 UTILITIES NOT A PART OF THE USA LOCATE SYSTEM WILL BE MARKED BY OTHERS AT NO COST TO CORAL CONSTRUCTION.
- 9 PROPOSAL EXCLUDES LIABILITY INSURANCE LIMITS IN EXCESS OF \$ 10.0 MM.
- 10 PROPOSAL IS VALID FOR THIRTY (30) CALENDAR DAYS.
- 11 PROPOSAL EXCLUDES CONCRETE OR ASPHALT REMOVAL OR REPLACEMENT.
- 12 ITEM 179 EXCLUDES CONCRETE FOUNDATION. ADD \$5000 EACH FOR CORAL TO PROVIDE.
- 13 PAYMENT FOR DBE SUPPLIED MATERIALS MUST BE MADE WITHIN 30 DAYS OF DELIVERY TO OUR YARD IN SACRAMENTO.

ABOVE PRICE QUOTED FOR IMMEDIATE ACCEPTANCE UNLESS OTHERWISE STATED; APPLY ONLY TO PROJECT SPECIFIED

CORAL CONSTRUCTION COMPANY

REVISED

BY:

Kris Karpstein

TITLE:

ESTIMATOR

DATE:

11/14/17

PO Box 347 Wilsonville, OR 97070 Office (503) 682.2252 Fax (503) 682.0110 www.coralconstruction.com
Contractor's Licenses: CA 332441A; ID 10872-AAA-4; NV 0017757A; OR 62818; MT 38340; UT 245858-5501; WA CORALCC211NZ

EXHIBIT C

Back To Query Form

Search Returned 1 Records

Wed Nov 15 09:17:10 PST 2017

Query Criteria

Firm ID: 38629

Firm Type: DBE

Firm ID	38629
Firm/DBA Name	VERTICAL CONSTRUCTORS, INC.
Address Line1	117 EAST COLORADO BLVD., SUITE 800
Address Line2	
City	PASADENA
State	CA
Zip Code1	91105
Zip Code2	
Mailing Address Line1	
Mailing Address Line2	
Mailing City	
Mailing State	
Mailing Zip Code1	
Mailing Zip Code2	
Certification Type	DBE
Email	BRYN@VERTICAL-CONSTRUCTORS.COM
Contact Name	DENA BRYN BURKE
Area Code	(714)
Phone Number	221-7170
Extension	
Alt Area Code	()
Alt Phone Number	
Extension	
Fax Area Code	(714)
Fax Phone Number	221-7171
Agency Name	LOS ANGELES COUNTY METRO TRANSPORTATION AUTHORITY (MTA)
Counties	14; 18; 30; 33; 36; 37;
Districts	07; 08; 09; 11; 12;
DBE NAICS	237310; 238990; 532412;

ACDBE NAICS

Work Codes	C9907 CONSTRUCTION EQUIPMENT RENTAL; D3530 CONSTRUCTION & RELATED MACHINERY;
Licenses	A General Engineering Contractor;
Trucks	
Gender	F
Ethnicity	CAUCASIAN
Firm Type	DBE

Back To Query Form



710 Dutton Street
Winters, CA 95694

(530) 795-4181 Fax (530) 795-3914 1 OF 1

Email: vlc@desilvagates.com

To: DeSilva Gates

Attn: Victor Le

Re: Hwy 65 Placer County

Bid Date 11-14-2017

AGGREGATE

PLANT

DOUBLES

Teichert Hallwood Days	\$110.00 P/H	Nights \$115.00 Per Hour
Teichert Perkins Days	\$105.00 P/H	Nights \$110.00 Per Hour
Western Agg Days	\$110.00 P/H	Nights \$115.00 Per Hour
Granite Bradshaw Days	\$105.00 P/H	Nights \$110.00 Per Hour
Vulcan Roseville Days	\$110.00 P/H	Nights \$115.00 Per Hour
Teichert Marysville Days	\$110.00 P/H	Nights \$115.00 Per Hour
Cemex Sheridan Days	\$110.00 P/H	Nights \$115.00 Per Hour

2,120 Hrs x \$115⁰⁰/Hr
= \$243,800⁻

ASPHALT

PLANT

DOUBLES

Teichert Hallwood Days	\$110.00 P/H	Nights \$115.00 Per Hour
Dantoni Days	\$110.00 P/H	Nights \$115.00 Per Hour
Vulcan Roseville Days	\$110.00 P/H	Nights \$115.00 Per Hour
Teichert Perkins Days	\$105.00 P/H	Nights \$110.00 Per Hour
Granite Bradshaw Days	\$105.00 P/H	Nights \$110.00 Per Hour

Asphalt rates include 10 min load & 15 min dump Doubles Std-by per min @

15 min load & 30 min dump Transfers Std-by per min @

QUOTED RATES ARE NOT PREVAILING WAGE.

MONDAY-FRIDAY ONLY

SATURDAY & NIGHTS ADD 5%, SUNDAYS ADD 10% ALL HOURLY

QUOTES VALID FOR 12 MONTHS FROM BID DATE.

8 HOUR MINIMUM WEEKDAYS

8 HOUR MINIMUM NIGHTS AND WEEKENDS

TONNAGE RATES ARE APPLICABLE ONLY IF PO IS ISSUED AND SIGNED BEFORE

JOB STARTS

DIR# 1000009390 EXP. 6/18

DBE# 414 EXP. 5/18

Double M Trucking, Inc. will not guarantee 100% DBE